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No. 113

In the Supreme Court of the United States

OCTOBER TERM, 1930

THE POTTSTOWN IRON COMPANY, PETITIONER

v.

THE UNITED STATES

ON WRIT OF CERTIORARI TO THE COURT OF CLAIMS

BRIEF FOR THE UNITED STATES

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OPINIONS BELOW

The opinion of the Court of Claims (R. 20) is reported in 40 F. (2d) 142.

JURISDICTION

The judgment of the Court of Claims was entered on April 7, 1930. (R. 23.) Petition for certiorari was filed May 13, 1930 (R. 24), and certiorari was granted June 2, 1930, 281 U. S. 717. The jurisdiction of this Court rests on Section 3 (b) of the Act of February 13, 1925.

QUESTION PRESENTED

Prior to the passage of the Revenue Act of 1926 the Commissioner of Internal Revenue signed and transmitted to the Collector a certificate on Form

7805, stating that the overassessments appearing on it had been allowed and directing the Collector to apply any overpayments against any taxes due from the taxpayers for other years. Also, prior to the passage of the Revenue Act of 1926, the Collector informed the petitioner by letter that the credits had been so applied. Subsequent to the passage of the Revenue Act of 1926, the Collector signed and certified the schedule of overassessments, together with Form 7805–A, showing the amounts credited and the amounts refundable. The Commissioner thereafter signed Form 7805–A, directing the disbursing clerk to make payment of the amounts refundable. The question is—

Whether interest on the credits should be computed under Section 1019 of the Revenue Act of 1924 or under Section 1116 of the Revenue Act of 1926; or, to state it another way, whether the credits were "taken" when the Commissioner signed the schedule of overassessments, Form 7805, or when the Collector made the entry of the credits on his records, or when the Collector signed the certificate showing the amounts credited, or when the Commissioner signed the schedule of refunds and credits, Form 7805–A.

STATUTES INVOLVED

The statutes involved are set out in the Appendix, *infra*, pp. 7–8.

STATEMENT

On January 29, 1926, the Commissioner of Internal Revenue signed a schedule of overassessments

on Form 7805, which included overpayments made by the petitioner for the years 1918, 1919, and 1920. This schedule was transmitted to the Collector for his action in accordance with the directions appearing thereon. (R. 17.) On February 23, 1926, in response to an inquiry from the petitioner, the Collector informed the petitioner by letter that $229.71922 of the overpayment had been applied as a credit against deficiencies in taxes for the year 1916 and 1917. (R. 18.) The Revenue Act of 1926 became law on February 26, 1926. On February 27, 1926, the Collector signed and certified the schedule of overassessments, together with the corresponding schedule on Form 7805–A. (R. 17.)

On April 15, 1926, the Commissioner signed the schedule of refunds and credits, Form 7805–A, and authorized the disbursing clerk to make payment of the amounts refundable. Treasury checks for these amounts, together with copies of certificates of overassessment, were thereafter mailed to the petitioner. (R. 17.)

Under Section 1019 of the Revenue Act of 1924 (p. 7, *infra*), interest on credits against additional assessments was payable from the date of the overpayment to the date of the assessment of the additional tax against which credit was applied. But under Section 1116 of the Revenue Act of 1926 (pp. 7–8, *infra*), which became effective February 26, 1926, the situation was changed with respect to overpayments and additional assessments for years prior to 1921. That section provided for the pay-

ment of interest from the date of the overpayment only to the date on which the additional tax against which the overpayment is credited should have been paid. By subdivision (c) of Section 1116, that section was made applicable—

> to any credit *taken*, on or after the date of the enactment of this Act, even though such * * * credit was allowed prior to such date. (Italics ours.)

The petitioner contends that the credits here involved were "taken" prior to February 26, 1926. The Court of Claims held (R. 21) that the credit was "taken" on April 15, 1926, when the Commissioner signed the schedule of refunds and credits, and that consequently Section 1116 of the Revenue Act of 1926 was applicable.

ARGUMENT

In *United States* v. *Swift & Company*, No. 56, October Term, 1930, the Government argues that a tax is paid by application of a credit on the date on which the Collector enters on his records the credits against the outstanding assessment and so satisfies the taxpayer's indebtedness. In the instant case the question is as to the date on which a credit is "taken" within the meaning of Section 1116 (c) of the Revenue Act of 1926. The other sections of that statute, the Committee reports about that Act, and the Treasury Regulations promulgated under it give no aid in construing the section. We submit that a credit is taken at the time when the tax is paid

by application of that credit, and that the instant case should be decided in accordance with the decision of this Court in the *Swift & Company* case. The Government contends that in each case the credit was taken and the tax paid when the Collector entered the credit on his records of the taxpayer's indebtedness. This is the contention of the petitioner in the instant case, and is contrary to the decision of the court below in favor of the Government.

A third view, not urged by either the petitioner or the Government, is possible. This is that the credit was taken when the Collector certified to the Commissioner the amounts credited. In the instant case this certificate was signed on February 27, 1926, after the enactment of the Revenue Act of 1926. Should this be held the date of the taking of the credit, the decision of the court below applying Section 1116 of the 1926 Act should be affirmed. We consider this certificate evidence that the tax has already been paid by application of the credit and therefore do not urge that the Collector's act of signing it constitutes the taking of the credit and payment of the tax.

The Court of Claims has consistently held that a credit is taken when the Commissioner approves the schedule of refunds and credits. See, for example, *Atlas Powder Co.* v. *United States,* 40 F. (2d) 136, where the opinion states (p. 141):

> The plaintiff contends that "the collector takes the credit," while the defendant in-

> sists that "the taxpayer takes the credit when he receives notice from the Commissioner that it has been made." Neither position is correct. The law takes the credit when the Commissioner has performed the act necessary to make the credit effective under the statute, and, in the absence of any statutory provision to the contrary, the credit is taken and is made effective when the Commissioner finally acts by approving the schedule certified to him by the collector.

Apparently no other court has passed upon the question.

Should this Court decide in the *Swift & Company* case that a tax, collected by application of a credit, is *paid* when the Commissioner signs the schedule of refunds and credits, we submit that it follows that the credit is *taken* at that same time, and that the decision below in the instant case should be affirmed.

Respectfully submitted.

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DECEMBER, 1930.

APPENDIX

STATUTES INVOLVED

Section 1019 of the Revenue Act of 1924, c. 234, 43 Stat. 253, 346 (U. S. C., Title 26, Sec. 153), provides:

> Upon the allowance of a credit or refund of any internal-revenue tax erroneously or illegally assessed or collected, or of any penalty collected without authority, or of any sum which was excessive or in any manner wrongfully collected, interest shall be allowed and paid on the amount of such credit or refund at the rate of 6 per centum per annum from the date such tax, penalty, or sum was paid to the date of the allowance of the refund, or in case of a credit, to the due date of the amount against which the credit is taken, but if the amount against which the credit is taken is an additional assessment, then to the date of the assessment of that amount. The term "additional assessment" as used in this section means a further assessment for a tax of the same character previously paid in part.

Section 1116 of the Revenue Act of 1926, c. 27, 44 Stat. 9, 119 (U. S. C. App., Title 26, Sec. 153), provides:

> (a) Upon the allowance of a credit or refund of any internal-revenue tax erroneously or illegally assessed or collected, or of any penalty collected without authority, or of any sum which was excessive or in any

manner wrongfully collected, interest shall be allowed and paid on the amount of such credit or refund at the rate of 6 per centum per annum from the date such tax, penalty, or sum was paid to the date of the allowance of the refund, or in the case of a credit, to the due date of the amount against which the credit is taken, but if the amount against which the credit is taken is an additional assessment made under the Revenue Act of 1921, the Revenue Act of 1924, or this Act, then to the date of the assessment of that amount.

(b) As used in this section—

(1) The term "additional assessment" means a further assessment for a tax of the same character previously paid in part, and includes the assessment of a deficiency under Title II or Title III of the Revenue Act of 1924 or of this Act;

(2) The term "date of the allowance of the refund" means, in the case of any income, war-profits, or excess-profits tax, the first date on which the Commissioner signs the schedule of overassessments in respect thereof.

(c) This section shall be applicable to any refund paid, and to any credit taken, on or after the date of the enactment of this Act, even though such refund or credit was allowed prior to such date.

U. S. GOVERNMENT PRINTING OFFICE: 1930

POTTSTOWN IRON COMPANY *v.* UNITED STATES.

CERTIORARI TO THE COURT OF CLAIMS.

No. 113. Argued January 9, 1931.—Decided February 2, 1931.

Interest on a credit for overpayment of an income and excess profits tax, is computed under the statutory provision for interest in force when the credit was allowed; and allowance of credit in this case took place when the Commissioner of Internal Revenue approved the schedule of refunds and credits received from the Collector. *United States* v. *Swift & Co., ante,* p. 468. P. 480.
40 F. (2d) 142, affirmed.

CERTIORARI, 281 U. S. 717, to review a judgment of the Court of Claims allowing a claim for interest on the credit of overpaid taxes.

Mr. Paul F. Myers, with whom *Mr. John R. Yates* was on the brief, for petitioner.

Assistant Attorney General Rugg, with whom *Solicitor General Thacher* and *Messrs. Claude R. Branch,* Special Assistant to the Attorney General, *Charles R. Pollard,* and *Bradley B. Gilman* were on the brief, for the United States.

MR. JUSTICE ROBERTS delivered the opinion of the Court.

United States v. *Swift & Company, ante,* p. 468, controls the decision of this case.

Here the Commissioner of Internal Revenue, upon audit of petitioner's income and excess-profits tax return for 1918, found an overpayment, and at the same time found an underpayment of similar taxes for the years 1916 and 1917. On January 22, 1926, he made additional assessments of the underpayments for 1916 and 1917,

and on January 29 he approved a schedule of overassessments which embraced the overpayment for the year 1918. The schedule was transmitted to the Collector of the appropriate district with the usual instructions and authority to check the overassessment against the taxpayer's account and determine whether the amounts in which the tax liability had been reduced should be abated in whole or in part, and if any part of the overassessment was found to be an overpayment to apply the same against taxes due, if any, making the appropriate entry in his accounts.

After this had occurred, petitioner inquired in writing of the Collector as to the status of its account. He replied by letter dated February 23, 1926, stating that he had applied the overassessment to close out the accounts of 1916 and 1917, thus extinguishing the taxpayer's liability as shown by his books. On February 27, 1926, he returned the schedule of overassessments to the Commissioner together with the usual subsidiary schedule of credits and refunds showing how he had credited the overassessment and that there remained a balance of 1918 taxes refundable to the taxpayer amounting to $21,152.12. On April 15, 1926, the Commissioner approved the schedule, thus authorizing the issuance of checks covering the amount to be refunded.

The question is whether interest should be allowed the petitioner under § 1019 of the Revenue Act of 1924 (43 Stat. 346) or under § 1116 of the Revenue Act of 1926 (44 Stat. 119). The latter act took effect February 26, 1926. The Court of Claims held that the act of the Commissioner in approving the schedule of refunds and credits and authorizing the issuance of checks on April 15, 1926, constituted the allowance of the claim for credit, and that interest on credits for 1916 and 1917 taxes should be calculated under the Act of 1926, which had then become effective. The petitioner argues that credit was allowed

or taken when the Collector, prior to February 26, 1926, made the entries upon his books, and that consequently interest on the credits should be calculated under the provisions of the Act of 1924. We hold, in conformity with our decision in *United States* v. *Swift & Co., supra,* that the allowance occurred April 15, 1926, when the Commissioner finally acted on the schedule of refunds and credits. The judgment is

Affirmed.